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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,799	07/23/2003	Richard Douglas Schultz	050337-1610 (06CXT0023WL)	9023
20306	7590	03/24/2009	EXAMINER	
MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP			BATES, KEVIN T	
300 S. WACKER DRIVE			ART UNIT	PAPER NUMBER
32ND FLOOR			2456	
CHICAGO, IL 60606				
		MAIL DATE		DELIVERY MODE
		03/24/2009		PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/625,799	SCHULTZ ET AL.	
	Examiner	Art Unit	
	KEVIN BATES	2456	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 February 2009.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,4-8,15-22 and 24-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1,2,4-8 and 15-20 is/are allowed.
- 6) Claim(s) 21,22 and 24-26 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2-3-09</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ . |

Response to Amendment

This Office Action is in response to a communication made on February 6, 2009.

The Information Disclosure Statement filed February 3, 2009 has been considered.

The Power of Attorney has been received on March 3, 2009.

Claims 3, 9-14, and 23 have been cancelled.

Claims 1, 2, 4-8, 15-18, 21-22, and 24 have been amended.

Claims 1-2, 4-8, 15-22, and 24-26 are currently amended.

Response to Arguments

Applicant's arguments filed February 6, 2009 have been fully considered but they are not persuasive.

The applicant argues that the examiner's interpretation of the means plus function language. The applicant asserts that the means plus function limitation includes the underlying hardware structure as described in the specification. The examiner disagrees with that interpretation. The actual means for performing the listed functional steps is executable software code. That code, when executed on a general purpose computer would perform the listed functions of the claim. The invention as claimed does not positively recite actual performance of those functions, thus does not require the hardware listed to execute the code, nor the hardware listed in the functional steps (i.e. the CPU, communications system transmitter). Since each means plus function limitation is only executable code, the invention as recited is software per se.

The examiner notes the applicant cited case law, but asserts that none of those cited cases are directed toward the concept that 35 USC §101 rejection for software per se on a claim with functional limitations is improper interpretation under 35 USC §112 6th paragraph.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 21-22 and 24-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 21 is directed towards a system with means plus function steps. A system can include both hardware and software embodiments and claim 17 shows that the means for performing the listed steps can be digital logic or software steps. Having a “processing means” only limits the means to those for performing a process and as shown from the specification it is digital logic or software that performs the described process. Software is not considered one of the four statutory classes thus the claim is directed towards non-patentable subject matter.

Claims 22 and 24-26 are directed towards non-patentable subject matter for the same reasons as claim 21.

Allowable Subject Matter

Claims 1-2, 4-8, 14-20 are allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN BATES whose telephone number is (571) 272-3980. The examiner can normally be reached on 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2456

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin Bates/
Primary Examiner, Art Unit 2456